## Office of Chief Counsel Internal Revenue Service

## memorandum

CC:LM:NR:HOU:2: POSTF-133135-02

NGraml

date: July 25, 2002

to: LMSB Appeals

Attn: Raul F. Pendas

from: Area Counsel

(Natural Resources: Houston)

subject:

Corporation and Subsidiary (n/k/a "LTD and Subsidiary")
EIN:
Taxable Years: (Mann), (Mann), and (Mann)
First Statute Expiration Date:

You requested our opinion regarding the following two issues:

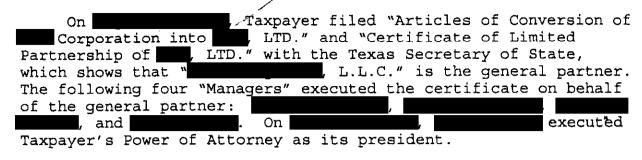
- 1. Whether the entity named in a notice of deficiency and Form 872-A issued/executed for and should be "Corporation and Subsidiary," Taxpayer's name during these taxable years, or LTD and Subsidiary," Taxpayer's current name after it converted, for state law purposes, from a Texas Corporation to a Texas Limited Partnership, but kept the same EIN and corporate entity status for federal tax purposes.
- 2. If the notice of deficiency should be in the former Taxpayer name, whether Appeals should also issue a notice of transferee liability to the current entity name.

## Facts

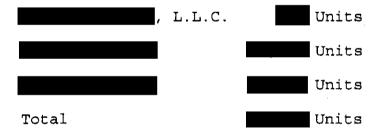
Taxpayer incorporated in the State of Texas before the taxable years in issue. Two individuals owned all outstanding voting stock in Taxpayer-parent as follows:



Taxpayer-parent owned percent of its subsidiary's voting stock.



Taxpayer filed its consolidated and Forms 1120¹ in its former name and a consolidated Form 1120, not a partnership return, in its current name. Taxpayer has not yet filed a return for Taxpayer attached to its Form 1120 a Plan of Reorganization, effective Multiple Partnership and that the corporation would continue to exist, without interruption, in the form of a limited partnership. The limited partnership would continue to own all property of the corporation and owe all the corporate liabilities. The former shareholders would now be limited partners, L.L.C. would be the general partner, and the limited partnership would have the same owners with the same ownership interests as the corporation's shareholders, as follows:



Taxpayer also attached to its return a Form 8832, "Entity Classification Election," in which it stated that it was electing an "initial classification by a newly-formed entity" and the form of its entity would be a "domestic eligible entity electing to be classified as an association taxable as a corporation" (using the new limited partnership name). The consolidated group continues to exist after the conversion with the same common parent for federal tax purposes. Taxpayer did not notify the district director that it was about to convert to a partnership entity for state law purposes, other than to attach the aforementioned documents to its return. The common parent never designated another member of the group to act as agent in its place for federal tax purposes either before or

¹ Counsel does not know the name Taxpayer used to file its return.

after the state entity conversion.

Taxpayer claims it changed its status from a corporation to a limited partnership for state law purposes only, in order to avoid the state corporate franchise tax. Taxpayer takes the position that its entity conversion constitutes section a 368(a)(1)(F)reorganization with no federal tax consequences.

## ANALYSIS

"Reorganization" under I.R.C. § 368(a)(1)(F) is "a mere change in identity, form, or place of organization, however effected." The Fifth Circuit established the criteria for determining whether there has been an "F" reorganization: an identity of shareholders and their proprietary interests, unimpaired continuity of the essential business enterprise, and a new form which is the alter ego of the old. See Davant v. Commissioner, 366 F.2d 874, 884 (5th Cir. 1966). The facts indicate that Taxpayer meets this test under the statute.

Regarding the first issue, Office of Chief Counsel provided field counsel with informal advice regarding how Taxpayer's name should be stylized as follows:

- 1. For the notice of deficiency: LTD (formerly Corporation) (EIN: and Subsidiary Consolidated Group.
- 2. For the Form 872: \_\_\_\_\_, LTD (formerly \_\_\_\_\_ Corporation) (EIN: \_\_\_\_\_ and Subsidiary Consolidated Group.\*

Regarding the asterisk after the word "Group," insert the following sentence at the bottom of the Form 872: "This is with respect to the following consolidated group for the taxable years and and

It appears that the second issue is moot because the notice of deficiency will be issued in the new entity name. A notice of transferee liability would not be necessary.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any questions, please call me at 281-721-7358.

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By:\_\_\_\_\_\_NANCY GRAML
Attorney (LMSB)